IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1549 of 2002.

Date of Decision :2.4.2007..

Nand Lal …Petitioner.

Versus:

State of H.P. and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.M.S.Guleria, Advocate.

For Respondents. Mr.C.B.Singh, Dy. Advocate General.

Sanjay Karol,J (Oral).

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

Under the H.P. Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975 (hereinafter referred to as the `Scheme') the petitioner was granted land bearing Khasra No.1598/1 ad-measuring 2-15-12 bighas of land upon payment of Rs.69.50 towards forest produce in terms of order dated 21st January, 1976.After taking possession petitioner improved upon the land and put it under cultivation. Admittedly, petitioner is a poor

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

landless person and dependant upon the produce from the said land for his subsistence. Over a period of time, petitioner has also put up his house and is residing there along with his family members. The order dated 21st January, 1976 was taken up in a revision petition No.154 of 1983 by the respondent-State before the Revisional Authority i.e. Deputy Commissioner, Mandi who ordered inspection of the land at site and found the petitioner in cultivating possession thereof. The revision petition seeking cancellation of the grant was dismissed by the authority on 11th July, 1984. However, the forest produce was assessed at Rs.1267/- and the Forest Department was directed to harvest the forest produce found on the land. This order was subsequently reviewed by the Deputy Commissioner and in terms of order dated 21st September, 1984, the Deputy Commissioner directed cancellation of the grant in terms of order dated 21.1.1976 with a direction that since the petitioner was a poor person having no other source of subsistence, he be granted another suitable piece of land.

Mr.M.S.Guleria, learned counsel for the petitioner contends that the order of review is totally illegal and unjustifiable.

Per contra, Mr.C.B. Singh, learned Deputy Advocate General has argued to support the order dated 21st September, 1984 passed by Deputy Commissioner, Mandi.

Undisputedly the Deputy Commissioner does not have any statutory power of review. Clause 9-A of the Scheme stipulates power of revision by the Deputy Commissioner against any grant. This power was exercised by the respondents whereby order dated 21st January, 1976 was upheld in terms of order dated 11th July, 1984. In the absence of any power of review, which must emanate from statute itself, the exercise of powers by the Deputy

Commissioner in reviewing its earlier order dated 11th July, 1984 is, therefore illegal. ***(Patel Narshi Thakershi and others Vs. Pradyumansinghji Arjunsinghji,*** AIR 1970 Supreme Court 1273.). Petitioner is in cultivable possession of the land since 1976. It would be highly inequitable to unsettle him after three decades.

In view of the aforesaid reasons, the impugned order dated 21st September, 1984 is set aside on these grounds alone. The writ petition is allowed. There shall be no order as to costs.

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(Sanjay Karol),
Judge.

April 2, 2007(R)